responded to MCImetro's request of April 14, 1997 as to "whether, when, and by what means US West intends to meet the additional deadlines." *See* Exhibit C. The Board should impose such requirements upon US West, because US West has not voluntarily met those deadlines.

CONCLUSION

29. US West has willfully, with no explanation or legal justification, refused to comply with the requirements of the local interconnection agreement between MCImetro and US West relating to Operations Support Systems ("OSS") and the overdue deadlines of the contract and Implementation Schedule.

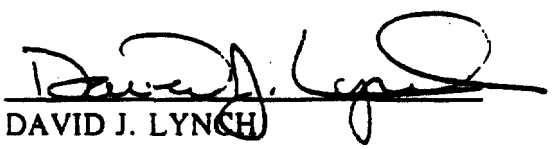
30. In addition, US West has not yet complied with the Board's order resulting from MCImetro's first motion to compel. MCImetro and US West have tentatively agreed to an arrangement under which MCImetro will review additional documents and US West will then decide whether to allow MCImetro to obtain copies of those documents. MCImetro is also awaiting US West's response to MCImetro's request for electronic access to the documents (or at least computer disks or CD-ROM access until electronic access is available). A hearing with respect to whether US West has complied with the Board's order or whether US West's conduct continues to be willful is therefore premature at this time. MCImetro reserves the right to renew its first motion to compel or seek other relief at the appropriate time.

WHEREFORE, MCImetro respectfully asks the Board to issue an order compelling US West to comply with the Board's interconnection order and provide an operations support system to MCImetro that is at least equal to that which US West provides to itself; impose upon US West an alternative, more expeditious schedule for development of an electronic interface than that proposed by US West; and take whatever steps are available to the Board under the law to compel

US West to comply with the requirements of the interconnection agreement and Implementation Schedule. as described above.

Dated June 25, 1997.

Respectfully submitted,



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AT&T COMMUNICATIONS OF THE MIDWEST, INC. ISSUE DA December 2, 1996
MCIMETRO ACCESS TRANSMISSION SERVICES, INC.
MFS COMMUNICATIONS COMPANY
US WEST COMMUNICATIONS, INC.
DOCKET NO. P-442,421/M-96-855; P-5321,421/M-96-909; P-3167,421/M-96-729

ORDER RESOLVING ARBITRATION ISSUES

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Marshall Johnson	Commissioner
Dee Knaak	Commissioner
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Don Storm	Commissioner

In the Matter of the Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCImetro Access Transmission Services, Inc., and MFS Communications Company for Arbitration with US WEST Communications, Inc. Pursuant to Section 252 (b) of the Federal Telecommunications Act of 1996

ISSUE DATE: December 2, 1996

DOCKET NO. P-442, 421/M-96-855;
P-5321, 421/M-96-909;
P-3167, 421/M-96-729

ORDER RESOLVING ARBITRATION ISSUES AND INITIATING A US WEST COST PROCEEDING

PROCEDURAL HISTORY

I. THE STATUTORY AND REGULATORY FRAMEWORK FOR THE DEVELOPMENT OF LOCAL COMPETITION

In 1995, the Minnesota legislature enacted sweeping legislation opening the local telephone market to competition. Minn. Stat. § 237.16 imposes a number of obligations on providers of telephone service to facilitate the development of a competitive market and to protect the public interest.

On February 8, 1996, the President signed into law the Telecommunications Act of 1996 (the Federal Act or Act). The Act's stated purpose is to provide the benefits of competition to U.S. citizens by opening all telecommunications markets to competition. (Conference Report to accompany S. 652). Under the terms of the Act, a competitive local exchange carrier (CLEC or new entrant) desiring to provide local exchange service can seek agreements with an incumbent local exchange carrier (ILEC or incumbent) related to interconnection with the ILEC's network, the purchase of finished services for resale and the purchase of the incumbent's unbundled network elements. *47 U.S.C. §§ 251 (c) and 252 (a)*. If the ILEC and the CLEC cannot reach an agreement within the time frame specified in the Act, either party may petition the State commission to arbitrate unresolved issues and to order terms consistent with the terms of the Act *47 U.S.C. § 252 (b)*.

On July 2, 1996, the Federal Communications Commission (FCC) issued an order and rules related to number portability in its FIRST REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING, FCC Docket No. 95-116, FCC 96-286. *(FCC Number Portability Order)*.

On August 8, 1996, the FCC issued an order and rules related to interconnection, resale, and access to unbundled network elements in its FIRST REPORT AND ORDER, FCC Docket No. 96-98, FCC 96-323 (*FCC Interconnection Order or FCC Rules*). The FCC Interconnection Order provided detailed rules to guide states in implementing the requirements of the Act. Portions of the FCC Order and Rules, primarily those related to pricing, have recently been stayed by the Eighth Circuit Court of Appeals.

II. INITIATION OF THESE PROCEEDINGS BEFORE THE COMMISSION

On February 8, 1996, MFS Communications Company (MFS) served US WEST Communications, Inc. (US WEST) with a request to negotiate under the Federal Act. After the parties failed to reach agreement on the negotiated issues, MFS petitioned the Commission for arbitration pursuant to the Act. On July 19, 1996, the Commission issued its ORDER GRANTING PETITION AND ESTABLISHING PROCEDURES FOR ARBITRATION. In that Order the Commission referred the matter to an Administrative Law Judge (ALJ) for hearing and set out the procedural format for the arbitration. The Commission limited party intervention in the proceeding to the Department of Public Service (the Department) and the Residential Utilities Division of the Office of Attorney General (the RUD-OAG), and allowed others to take part as "non-party participants." Under the time frame established in the Federal Act, the Commission set a November 8, 1996 deadline for a final Commission decision on the arbitration.

On March 1, 1996, AT&T Communications of the Midwest, Inc. (AT&T) served US WEST with a request to negotiate under the Act. After the parties failed to agree on all their negotiated issues, AT&T petitioned the Commission for arbitration pursuant to the Act. On August 9, 1996, the Commission issued its ORDER GRANTING PETITION AND ESTABLISHING PROCEDURES FOR ARBITRATION (*the AT&T Procedural Order*). This Order referred the matter to an ALJ for hearing, set arbitration procedures, allowed non-party participants, and limited party intervention to the Department and the RUD-OAG. Under the time frame set out in the Federal Act, the Commission set a December 2, 1996 deadline for a final Commission decision on the consolidated arbitrations.

On March 26, 1996, MCImetro Access Transmission Services, Inc. (MCImetro) served US WEST with a request to negotiate under the Act. After the parties failed to agree on all their negotiated issues, MCImetro petitioned the Commission for arbitration pursuant to the Act. On August 26, 1996, the Commission issued its ORDER GRANTING PETITION AND ESTABLISHING PROCEDURES FOR ARBITRATION AND GRANTING REQUEST FOR CONSOLIDATION (*the MCImetro Procedural Order*). This Order referred the matter to an ALJ for hearing, set arbitration procedures, allowed non-party participants, and limited party intervention to the Department and the RUD-OAG. The Order also consolidated MCImetro's arbitration with that of AT&T. The Commission retained the December 2, 1996 deadline established for the AT&T arbitration.

By Order dated September 13, 1996, ALJ Edward Schwartzbauer consolidated the MFS-US WEST arbitration with those of AT&T and MCImetro. MFS, which had requested the consolidation, waived its right to an earlier decision deadline and agreed to the December 2, 1996 deadline for a Commission decision in the consolidated arbitration.

The following parties were granted participant status in the consolidated arbitration: Frontier Telemanagement, Inc.; Sprint Communications Company; and United Telephone Company.

III. THE PARTIES AND THEIR REPRESENTATIVES

The parties and their representatives are as follows:

AT&T was represented by John B. Van de North, Jr., and Mark J. Ayotte, Briggs and Morgan, 2200 First National Bank Building, St. Paul, MN 55101, and Rebecca DeCook, AT&T, 1875 Lawrence St., Suite 1575, Denver, CO 80202.

MCImetro was represented by Amy Klobuchar, Gregory R. Merz, and Ben Omoroghe, Gray, Plant, Mooty, Mooty & Bennett, 3400 City Center, 33 South Sixth St., Minneapolis, MN 55402. and Philip E. Stoffregen, 1600 Hub Tower, 699 Walnut St., Des Moines, IA 50309, and Karen L. Clauson, 707 175th St., Suite 3700, Denver, CO 80202.

MFS was represented by Richard M. Rindler and Lawrence R. Freedman, Swidler and Berlin. 3000 K St. NW, Suite 300, Washington, D.C. 20007.

US WEST was represented by David G. Seykora, US WEST, 200 South Fifth St., Room 395. Minneapolis. MN 55402, and James A. Gallagher, Maun & Simon, 2000 Midwest Plaza Building West, 801 Nicollet Mall, Minneapolis, MN 55402, and Kathryn E. Sheffield. US WEST, 1801 California St., Suite 5100, Denver, CO 80202.

The Department was represented by Ellen Gavin and J. Jeffery Oxley, Assistant Attorneys General. 1200 NCL Tower, 445 Minnesota St., St. Paul, MN 55101.

The RUD-OAG was represented by Scott Wilensky and Eric J. Peck, Assistant Attorneys General. 1200 NCL Tower, 445 Minnesota St., St. Paul, MN 55101.

IV. EVIDENTIARY HEARINGS

The consolidated arbitration hearings were conducted by Administrative Law Judges Phyllis A. Reha (Chair), Allan W. Klein, Steve M. Mihalchick, and Edward J. Schwartzbauer (together, the Panel). Hearings were held from October 7, 1996, to October 15, 1996, in St. Paul, Minnesota. The record closed on October 24, 1996, upon receipt of the reply briefs.

The Panel filed its Arbitrators' Report with the Commission on November 5, 1996. The Arbitrators' Report addressed 94 unresolved issues which the parties had included in a joint list of disputed issues presented to the Panel. Exceptions to the Report raised five additional unresolved issues regarding matters between US WEST and MFS.

V. CURRENT PROCEEDINGS BEFORE THE COMMISSION

On November 14, 1996, the Commission heard oral arguments from the parties and on November 15, 1996, the Commission met to deliberate.

Upon review of the entire record of this proceeding, the Commission makes the following Findings of Fact, Conclusions of Law, and Order.

GENERAL FINDINGS AND CONCLUSIONS

I. JURISDICTION

The Commission has jurisdiction over this proceeding under § 252(b) of the Federal Act and § § 237.16 and 216A.05 of Minnesota Statutes.

Section 252(b) of the Act provides for State commission arbitration of unresolved issues related to negotiations for interconnection, resale and access to unbundled network elements. Specifically, it authorizes the Commission to "resolve each issue set forth in [an arbitration] petition and the response, if any, by imposing appropriate conditions . . .." *47 U.S.C. § 252(b)(4)(C).*

Section 237.16 of Minnesota Statues vests the Commission with broad authority related to competitive entry, interconnection and the other matters raised in this arbitration. The Commission has exclusive authority to prescribe the terms and conditions for the provision of local telephone service and any related construction in order to "bring about fair and reasonable competition . . .." *Minn. Stat. § 237.16, subd. 1(a).* The Commission also has authority to set terms for temporary interconnection under § 237.16, subd. 10, and to prescribe rules in virtually all the areas relevant to this arbitration, including network unbundling, number portability and service quality under § 237.16, subd. 8.

Section 216A.05 authorizes the Commission to investigate, hold hearings and issue orders in carrying out its statutory duties, which include the Commission's responsibilities under § 237.16.

II. DECISION STANDARD

In resolving the issues in this arbitration and imposing conditions, the Commission must (1) ensure that the resolution meets the requirements of § 251 of the Act, including any legally enforceable regulations prescribed by the FCC pursuant to § 251; (2) establish any rates for interconnection, services or network elements according to § 252(d) of the Act; and (3) provide a schedule for implementation by the parties. *47 U.S.C. § 252(c).* The Commission may also establish or enforce other requirements of state law when addressing issues related to intercompany agreements under § 252. *47 U.S.C. §§ 252(e)(3); 253(b); and 601(c)(1).*

In short, the Commission must impose terms and conditions in this proceeding that are just, reasonable, nondiscriminatory and fair to both the new entrants and the incumbent, LEC, consistent with the specific requirements set forth in federal and state law.

III. IMPACT OF 8TH CIRCUIT STAY OF CERTAIN FCC RULES

On October 15, 1996, the Eighth Circuit Court of Appeals, in Iowa Utilities Board, et al. v. FCC, issued an order staying the following portions of the FCC Interconnection Order, Appendix B-Final Rules:

4. Commission Decision

Directory distribution. The Commission finds that US WEST must facilitate the distribution by US WEST Direct of one white and one yellow pages directory to every telephone subscriber within the geographic area covered by the directory.

The Commission believes that all parties agree to this requirement, and all will be benefitted by the expanded directories.

Yellow pages advertising. US WEST is an affiliate of US WEST Direct. Given this status, US WEST must ensure that it is treated in a competitively neutral manner by US WEST vis a vis the new entrants. If US WEST receives a commission from US WEST Direct for placement of yellow pages advertising, CLECs should receive the same commission. US WEST Direct must give CLECs the same opportunity to provide directory listings as it provides to US WEST (for example, through some type of bidding process). If a CLEC is not given the same directory listing opportunity as US WEST, the CLEC should receive a share of the revenues (based on the percentage of lines belonging to that CLEC in the particular list) that US WEST receives from US WEST Direct.

US WEST should make its contracts with US WEST Direct available for review by CLECs, as necessary, to ensure that the CLECs are receiving the same services at the same terms as US WEST.

The Commission approves US WEST's proposed contract language on these issues, to the extent it is consistent with this decision.

IX. QUALITY STANDARDS

At least initially, new entrants will compete with US WEST primarily through reselling the incumbent's services, and purchasing the use of the Company's unbundled network elements. The quality of the services provided by the new entrants, therefore, will depend substantially on the quality of the services or network elements they receive from US WEST. Not surprisingly, AT&T and MCImetro have raised the issue of quality in this proceeding.

Specifically, the parties have asked the Commission to impose contract terms that (1) establish quality standards applicable to the services and network elements US WEST makes available to competitors; and (2) impose performance credits for failure to meet those standards.

As discussed below, the Commission will order the parties to incorporate AT&T's quality standards and performance credits into the US WEST/AT&T and US WEST/MCImetro agreements.

A. Selection of Quality Standards

1. The Issue

The parties disagree on what quality standards the contract should include. US WEST insists that it should be held to a general parity standard under which the Company would be required to

provide the same quality to competitors that it provides to itself, based on US WEST's average performance. AT&T and MCImetro argue for more specific, objective performance standards.

MCImetro includes specific performance standards in Part A, § 13, Atts. VIII and X of its proposed contract. AT&T's contract includes standards and companion performance measures called "Direct Measures of Quality" (DMOQs) in § 8, Att. 11 of its proposed agreement. The DMOQs measure performance in areas such as installation and repair commitments; trouble reports; missed appointments; access to information for handling pre-order inquiries of possible subscribers; and completion of subscriber orders.

US WEST's proposed contract, § XXXII. would simply require US WEST to "meet or exceed [its] average performance . . . for the total universe of specified activities," subject to audit procedures in § XXIV.

2. Applicable Law

The Federal Act requires an ILEC to provide a new entrant with interconnection "that is at least equal in quality to that provided by the [incumbent] to itself or to any subsidiary, affiliate or any other party . . .." *47 U.S.C. § 251(c)(2).* The Act further directs an ILEC to "provide . . . nondiscriminatory access to [its] network elements . . . on rates terms and conditions that are just, [and] reasonable." *47 U.S.C. § 251(c)(3).*

The FCC Interconnection Order defines nondiscriminatory access to unbundled network elements under the Act as access "at least equal in quality to that which the incumbent LEC provides to itself." *47 C.F.R. § 51.311(b).* The FCC Order goes on to require the incumbent to provide access "superior in quality to that which [it] provides itself," upon request and to the extent technically feasible. *47 C.F.R. § 51.311(c).* The incumbent has the burden of proving that any such request is technically infeasible. *Id.*

Section 252(d) of the Act requires the Commission to resolve open issues in an arbitration by "imposing appropriate conditions . . .."

3. The Panel's Recommendation

The Panel concludes that US WEST must provide interconnection, access and services to competitors at the same level of quality the Company provides to itself. The Panel, therefore, recommends that the Commission require US WEST to meet existing Commission rules and abide by the performance criteria and audit procedures in US WEST's proposed contract, § § XXXII. XXIV, VI(E) and XXX(C)(3). The Panel recommends further that the CLECs in this case be required to use US WEST's proposed BFR process to negotiate higher levels of quality.

4. Commission Decision

The Commission will depart from the Panel's recommendation on this issue and, instead, will direct US WEST, AT&T and MCImetro to incorporate AT&T's proposed performance standards and DMOQs into their final agreements as set forth in § 8, Att. 11 of AT&T's proposed contract. These standards provide reasonable performance measures to ensure high quality service to subscribers consistent with the specific requirements and competitive aims of federal and state law.

The Federal Act, FCC Interconnection Order and state law require the incumbent to provide services and facilities to a new entrant at least at parity with the services and facilities it provides itself. Congress and the FCC clearly included this requirement to protect new entrants from anti-competitive conduct by an incumbent. They understood, as does the Commission, that new entrants will be heavily dependent for some time on the services and networks of incumbents. Allowing an incumbent to provide lower quality services or facilities to a competitor would place the competitor at a severe disadvantage, forcing the new entrant to pass along the inferior service to its actual or potential subscribers. This could damage the new entrant's good will with consumers, perhaps irreparably, and thwart the new entrant's ability to gain market share.

Federal law also gives a new entrant the right to define its own level of quality, even if it exceeds the level of quality the incumbent provides to itself. The incumbent must meet any higher standards requested by a CLEC, unless the incumbent can prove those standards to be technically infeasible. Here, the FCC recognized that new entrants may choose to compete on the basis of quality as well as price, and that a new entrant's efforts to provide a higher grade of service should not falter on an incumbent's refusal to make technically feasible accommodations.

The weight of evidence supports applying AT&T's proposed standards and DMOQs. Only US WEST opposes adopting these standards.[7] The Department, which represents the broad public interest, considers the DMOQs reasonable and its expert witness testified to that effect in the hearings. AT&T's proposed performance measures comport with industry standards and offer the specificity necessary to ensure that US WEST provides its competitors with services comparable to its own. US WEST has failed to produce its own internal quality benchmarks to ensure comparability. AT&T's quality standards may exceed US WEST's in some instances; however, the US WEST has failed to carry its burden of proving that these standards impose upon it technically infeasible burdens.[8]

The Commission finds that the Panel's recommendations fail to effectively implement the quality guarantees of the Federal Act and FCC Order. The ALJ Panel relies on the Commission's existing rules and on US WEST's proposed standard and audit procedure. This approach falls short in at least two respects.

First, the Commission's existing rules have little to do with the quality of service one company provides another in today's emergingly competitive market. The rules were adopted nearly 20 years ago, far removed from the competitive issues and modern technology of today. Moreover, they address a carrier's obligations to end-users, not its obligations to competing co-carriers. The Commission's Rule 7810.2800, for example, requires a telephone company to meet 90% of its

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[7] AT&T, MCImetro and the Department support adoption of AT&T's standards and DMOQs. The RUD-OAG and MFS have not taken a position the use of DMOQs.

[8] The Commission notes that the FCC assumes new entrants will compensate ILECs "for any efforts they make to increase the quality of access or elements within their own network," as part of their obligation to pay the costs of unbundling. *FCC Interconnection Order, Paragraph 314.* US WEST's failure to provide any internal benchmarks of its own service quality prevents the Commission from determining whether AT&T's performance standards would require US WEST to increase the quality of its own elements or network.

customer commitments in a number of areas. This protects end-users; however, it does not protect a new entrant from an incumbent that decides to meet its 90% obligation only for its own end-users, leaving the competitor with the remaining 10% of unhappy subscribers.

Second, US WEST's vague proposal to measure quality according to its own "average performance" in a list of four broad areas does not provide the clarity necessary to determine whether US WEST is providing adequate or equivalent services and facilities to its competitors. The Commission questions whether US WEST's "average performance" provides an appropriate measure of the minimal "service parity" the incumbent must provide pursuant to federal law. Moreover, the Commission considers US WEST's average performance an inadequate safeguard for competitors and end-use customers in light of the Company's recent history of service quality problems, which led to a Department investigation and settlement. See In the Matter of an Investigation into US WEST Communications, Inc.'s Service Quality, ORDER ACCEPTING SETTLEMENT WITH MODIFICATIONS, Docket No. P-421/CI-95-648 (May 2, 1996).

The Commission considers specific, enforceable quality standards such as the ones proposed by AT&T an essential component of any contract between an incumbent and new entrant. Specificity serves the interests of end-users directly by establishing clear benchmarks of quality consumers can expect from each provider. It furthers the interest of competition by impeding an incumbent's ability to deny new entrants the quality services and facilities they need to compete with the incumbent.

The Commission has no doubt an incumbent could, contrary to law, provide a new entrant a lesser grade of service than it provides itself in ways that would not be readily discernable absent precise, objective measures of quality in a binding agreement. This would leave the new entrant at a competitive disadvantage, since the new entrant would be left passing the inferior grade of service on to its own subscribers. The objective performance criteria ordered in this arbitration will go a long way towards eliminating the possibility of this kind of anti-competitive behavior.

The Commission, therefore, will adopt the standards and DMOQs proposed by AT&T as the best method of securing MCImetro's and AT&T's rights under federal law to quality services and network elements from the incumbent, and of ensuring high quality services to subscribers. US WEST has failed to show AT&T's proposal to be technically infeasible.

B. Performance Penalties

1. The Issue

MCImetro and AT&T recommend imposing a system of performance credits to compensate the new entrants for losses resulting from US WEST's failure to meet the standards set forth in the agreement. MCImetro, for example, proposes the following if US WEST fails to meet a deadline for provisioning service to the new entrant: (i) a waiver of the installation or provisioning charge; and (ii) a credit equal to the associated monthly charge for the service for each month or partial month of delay. *MCI Agreement, Att. X, Section 3.1.* AT&T proposes similar credits tied to its DMOQs, including a $25,000 credit for each instance of 5000 or more blocked call attempts within 10 minutes in a single exchange resulting from substandard switched network performance.

The Department endorses the inclusion of performance credits in the agreement as recommended by the new entrants. The Department maintains that such credits will protect new entrants and provide a needed incentive to ensure high quality service to the customers of US WEST's competitors.

US WEST opposes imposing the credits, arguing that the Commission does not have the authority to impose these credits, which it characterizes as liquidated damages or penalties.

2. Applicable Law

The laws applicable to establishing quality standards apply to the issue of performance credits related to those standards.

3. The Panel's Recommendation

The Panel does not make any recommendation on the issue of performance credits, assuming that AT&T and MCImetro have dropped their requests for these credits.

4. Commission Decision

The Commission will direct US WEST, AT&T and MCImetro to include AT&T's proposed credits in their final agreements, as set forth in Attachment 11 to AT&T's proposed contract. Contrary to the Panel's assumption, AT&T and MCImetro continue to urge adoption of these performance credits as companion provisions to the performance standards set forth in their proposed agreements.

The performance credits give meaningful effect to the quality standards in the agreement. An incumbent's noncompliance with quality standards could cause a new entrant to lose customer good will or impede the new entrant's ability to gain market share. It would be very difficult to quantify these damages with much precision. The Commission cannot envision how it might determine exactly how many customers a new entrant would lose because of failures in the incumbent's network, or what the associated losses in revenue would be. Nor can the Commission imagine placing a precise dollar value on the damage to the new entrant's reputation. Clearly, the typical case-by-case calculation of damages after the fact would not work here.

Given these uncertainties, AT&T's proposed credits provide a reasonable estimate of the damages associated with failure to meet the quality standards in the contract. The credits include, for example, a $25,000 per day charge for an impermissible delay not specific to an individual customer. This amount pales next to US WEST's daily intrastate revenues of approximately $2.5 million. Yet, the impact of such a delay on the CLEC could be substantial, steering its current or potential customers away from the CLEC and creating long-standing harm to its reputation.

US WEST's proposed contract offers nothing concrete to address the issue of compensating new entrants for failure to meet the agreement's quality standards. The Company merely provides that the parties will make a good faith "attempt to resolve such issues through negotiation or non-binding arbitration," assuming US WEST fails to meet the performance criteria "for two

consecutive periods." The Commission sees no value in such a vague standard. US WEST's approach leaves the enforcement of the contract's quality standards entirely to individual complaint or enforcement proceedings without any clear guidance on how damages will be calculated or assessed. This would give US WEST further opportunity to delay and resist competition in its local market, contrary to the purpose of state and federal law.

X. DISPUTE RESOLUTION

A. The Issue

The parties all recommend the contract include a process for resolving disputes that arise under the agreement. US WEST proposes negotiation and nonbinding arbitration to resolve disputes, reserving the parties' rights to seek legal or regulatory intervention as provided by state or federal law.

AT&T proposes a detailed binding arbitration process with a sitting arbitrator, along with a "loser pays" provision that would require the losing party to pay all the arbitrator's fees and expenses directly related to the proceeding.

MCImetro recommends an expedited Commission proceeding to resolve disputes between the parties. The MCImetro process would give the Commission 60 days to decide the dispute. The Commission could, under MCImetro's proposal, appoint experts or facilitators to assist in the proceeding. Although MCImetro states its support for a loser pays provision, it proposes that each party pay half of the fees and expenses incurred.

B. Applicable Law

Section 252(b) of the Federal Act requires the Commission to arbitrate contract disputes between incumbents and new entrants. The Act specifically authorizes the Commission to decide all the open issues presented by the parties and impose appropriate conditions. *47 U.S.C. § 252(b)(4)(C).*

C. The Panel's Recommendation

The Panel recommends adopting AT&T's proposal, including the loser pays provision as it applies to binding arbitration.

D. Commission Decision

The Commission will reject the Panel's recommendation and will, instead, adopt MCImetro's proposal, which provides for an expedited Commission process of dispute resolution and an equal apportionment of the costs between the parties.

MCImetro's proposal, more than the others, captures the intent of the Federal Act and recognizes the need for continuing and consistent Commission oversight. The Federal Act puts State commissions in charge of ensuring that intercompany agreements comply with the law consistent with the public interest. It authorizes State commissions to arbitrate open issues and requires that all agreements under the Act be submitted to State commissions for approval. It makes sense.

H

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions in the	)	RM 9101
Telecommunications Act of 1996	)	

AFFIDAVIT OF JOHN RUJA
On Behalf of MCI Telecommunications Corporation

I, John Ruja, being first duly sworn upon oath do hereby depose and state as follows:

1. My name is John Ruja. I am the Senior Manager responsible for MCI's national planning efforts and for measurement projects associated with the implementation of OSS interfaces.

2. I received a B.S. in political science from Wright State University. I worked for Ameritech for 17 years in areas of customer service billing, ordering, and collections, training, process analysis/design, and customer service systems project management and implementation.

3. I have been employed by MCI for four years in various management capacities. My responsibilities have included negotiation and financial performance of MCI's billing contracts with various Incumbent Local Exchange Companies (ILECs) and Competing Local Exchange Carriers (CLECs).

4. My current responsibilities have given me or members of my department personal familiarity with the issues I discuss below.

Purpose of My Affidavit

5. Many of the ILECs claimed in their submissions that their OSS was completely adequate. Although MCI does not feel that this is the appropriate proceeding in which to evaluate this question, MCI did not want to leave the misimpression that by failing to answer these ILEC claims, it was agreeing with them. As a result, I am going to briefly set forth a summary of some of the deficiencies in ILEC OSS, focusing on three main areas -- lack of automated interfaces, failure to adopt industry standards, and inadequate evidence of operational readiness. Because it is impossible to discuss the OSS of each ILEC, this affidavit only discusses the OSS of the BOCs. Even with respect to the BOCs, this affidavit is by no means meant to be a catalog of all of the problems with the OSS of each ILEC.

Lack of Automated Interfaces

6. In its comments, U.S. West states that "[p]rocedures and systems based on human intervention are exceedingly costly and have a greater potential for error." U.S. West is correct. As the Department of Justice explained in opposing SWBT's Oklahoma § 271 filing, "recent experience provides strong evidence that attempts at local market entry, even with the benefit of partially automated mechanisms, may flounder without automated processes to support rapid and

large-scale entry." DOJ Brief, p. 68. The Department further explained that in order to realize the benefits of automation, an ILEC's automated interface must automatically flow through into the ILEC's own systems. DOJ Brief, pp. 70-71.

7. Nonetheless, there are many important OSS functions for which the ILECs have yet to offer automated interfaces. For example, many orders involve some sort of complex service such as trunks, Centrex, 800, WATS, or ISDN. No ILEC offers automated interfaces capable of handling all such orders at the volumes a CLEC may require. The lack of automation extends well beyond complex services, however. U.S. West, for example, requires faxed instructions to change or cancel an order or to order a directory listing, and requires a separate order to be placed for each line ordered. Bell South requires coordination with its account teams for all orders that have more than nine lines.

8. Even when the ILECs claim that their ordering interfaces are automated, many times the order will drop to a manual process on the ILEC's side of the interface. In PacBell, almost all orders drop to manual and are re-keyed by PacBell employees -- even simple resale of POTS. In Bell Atlantic, all orders other than simple resale conversions of residential accounts `as is' drop to manual -- even if everything goes as planned. In Bell South, all orders for unbundled elementsl drop to manual, requiring a BellSouth employee to reenter the order into BellSouth's systems. In Ameritech, although more types of orders are theoretically capable of flowing through to Ameritech's own systems than is true for these other ILECs, 26.7% of orders for resale POTS dropped to manual in March, according to Ameritech's own figures.

9. With SWBT and U.S. West, it is not yet known which types of orders, or what percentage of orders, will drop to manual on the ILEC's side of the interface.

10. The situation is even more bleak with respect to ordering for unbundled elements. No ILEC yet offers an automated interface capable of handling all such orders. Even for basic unbundled elements, such as loops, interim number portability, and switch ports, no ILEC has shown that it allows for automated flow through from the interface into the ILEC's back end systems. Indeed, some ILECs do not even claim to offer an automated interface between the CLEC and the ILEC. U.S. West, for example, does not have automated processes for ordering any UNEs. Nynex's EDI ordering interface similarly does not support UNEs.

11. The automation of provisioning processes is even less advanced. Some ILECs, such as U.S. West, do not even offer automated processes to provide Firm Order Confirmations. Almost no ILECs yet offer automated processes for jeopardy notification or completion notification. U.S. West does not even offer an automated process for Firm Order Confirmations. These vital processes are therefore often delayed, if they take place at all.

12. Most ILECs also do not presently offer standard automated interfaces for pre-ordering. Instead, most offer proprietary Graphical User Interfaces (GUIs), with the inherent difficulties for national CLECs of attempting to train their representatives on each GUI. A GUI is a front end system accessed via dial-up connections. GUIs requires the CLEC customer service representative to first use the GUI in a separate dial-up session and then re-enter data obatined from the GUI into the CLEC's own internal systems to complete customer negotiation functions. In contrast, an ILEC representative only has to use the ILEC's own internal system. The dual data entry required of CLECs is discriminatory. As the Department of Justice, such dual data entry while the customer waits on the line, "would place a competitor at

a significant disadvantage by introducing additional costs, delays, and significant human error." DOJ Oklahoma brief, p. 75.

13. The GUIs generally suffer from severe additional flaws as well. Bell South's GUI called LENS, for example, is extremely cumbersome, requiring customer service representatives to perform the address validation function each time they want to access one of the other pre-order functions. In addition, the functionality provided by LENS is not a parity with Bell South -- CLECs receive only a subset of the CSR data available to Bell South, can only receive a standard service interval instead of a calculated due date, and are "timed out" of LENS after a certain period of inactivity.

14. Bell Atlantic's GUI called ECG is also extremely cumbersome. It requires a customer service representative to enter the customer's billing telephone number, scroll to the working telephone number, highlight the features the customer wants to retain, move them to a clipboard, print them out, look up the USOCs (ordering codes) in a book to determine what features they are for and then re-type them into the system. The key strokes needed to perform these tasks are presented incorrectly at the bottom of the screen; these keystrokes need to be translated into the correct keystrokes using a mapping guide (which was provided only after significant confusion had arisen) by Bell Atlantic.

15. NYNEX's GUI suffers similar problems, making it extremely difficult to use. Thus only the CLEC employee who first enters an order for a customer may recall that customer's order through the GUI, making it extremely difficult to deal with changes to an order. Navigation through multiple screens and slow response time makes pre-ordering a lengthy process. Additionally, it is impossible through the GUI to obtain consecutive numbers for multi-

line accounts, or to obtain personalized vanity numbers. And the GUI is not available 24 hours a day, 7 days a week if changes need to be made to an order.

16. PacBell does not provide any kind of automated access to customer service records. For those pre-ordering subfunctions that it does provide, PacBell requires CLECs to use slow and unreliable dial-up access to its CLEO system. CLEO cannot be integrated into a CLECs systems and "times out" after any period of inactivity, cutting a CLEC's customer representative off. Moreover, CLEO only allows MCI to reserve 5 telephone lines at a time, so that an MCI representative may have to exit and re-enter the system to complete an order.

17. U.S. West's IMA pre-ordering system similarly does not provide access to all of the information needed to place an order. For example, it does not allow a CLEC customer service representative to determine in which zone a customer lives, information necessary to determine the monthly fee to quote the customer; it also does not validate addresses from multi-family dwellings. In addition, as I discuss further below, early attempts to use the system have resulted in a high proportion of failures.

18. Only two CLECs presently offer system to system pre-ordering interfaces. Each of these interfaces is itself deficient. As my boss, Sam King, explained in his affidavits regarding Ameritech's and SWBT's § 271 filings with this Commission, neither SWBT's Datagate interface, nor Ameritech's EDI pre-ordering interface have been adequately tested, and neither is the solution generally agreed upon by the industry.

19. As MCI explained in opposing SWBT's § 271 application for Oklahoma, while SWBT is, to a certain extent, correct that there is not yet a standard electronic interface for pre-ordering, the industry has agreed, through consensus in the ECIC Committee of ATIS, that EDI

via TCP/IP using SSL3 is the appropriate interim interface for pre-ordering. The EDI subcommittee has already mapped most data elements needed for this interface in the process of developing an EDI interface for ordering. Although not as good as the electronic bonding solution that MCI advocates as the long term solution for the industry, EDI TCP/IP/SSL3 is a good solution for pre-ordering for the intermediate term. EDI TCP/IP/SSL3 provides a technical configuration that connects the CLEC's systems to the ILEC's system and enables pre-ordering information to be sent in near real-time.

20. The industry has not yet released complete specifications for EDI TCP/IP/SSL3. But the ILECs are fully aware of the general direction of the industry solution for pre-ordering, including most of the data elements the solution will use. To MCI's knowledge, none has begun developing such an interface.

Industry Standards

21. It is critical that ILECs "comply with emerging industry standards . . . and . . . begin development of interfaces in anticipation of such standards. If all ILECs adhere to the same standard it will ultimately reduce the need for competitors to build completely separate interfaces for each ILEC, lowering competitor costs and facilitating faster development of such interfaces." DOJ Oklahoma brief, p. 74. Many ILECs, however, are dragging their heels with respect to implementation of industry standards.

22. No ILEC, for example, has yet committed itself to use the standard codes recently defined by the Telecommunications Industry Forum ("TCIF") Electronic Data Interchange

("EDI") Service Order Sub-Committee ("SOSC") as Feature Codes. These codes are meant to replace the most frequently used proprietary codes used by each ILEC for ordering (USOC codes). The thousands of different codes are often quite difficult for a customer service representative to figure out even independent of the difficulty of having to learn different codes for each ILEC and often each state.

23. Although most CLECs have begun implementing some form of industry standard EDI for ordering, one CLEC, U.S. West, has only recently agreed to implement EDI and has not agreed to have an operational EDI interface even for resale POTS until mid to late 1998. Even at that point, U.S. West will be far behind the industry standard version of EDI which today already includes unbundled loops, switch ports, and number portability.

24. Many ILECs are not employing industry standard CABS BOS for billing CLECs for resold services and for unbundled loops and switch ports. Use of CABS BOS is advantageous not only because it is industry standard, but also because it is far more easily auditable than most other billing formats. Nonetheless, SWBT has rejected CABS BOS for resale billing even though its merger partner, PacBell, originally agreed to use CABS BOS at some point in the future. PacBell is currently using CRIS for most billing and seems to be waffling somewhat on its commitment to move to CABS BOS. Ameritech has also rejected CABS BOS in favor of the Ameritech Electronic Billing System (AEBS) for resale billing. Bell Atlantic uses CRIS for resale billing and for billing unbundled loops and switch ports. Bell South, although commited to moving to CABS, also is presently employing a type of CRIS billing for both resale and unbundled loops and ports.

25. For maintenance and repair, most ILECs claim to offer the industry standard electronic bonding interface. Bell South, however, continues to offer "TAFI." TAFI is a non-standard interface, which requires dual data entry by CLECs who must obtain the information from TAFI and then re-enter it into their own systems. TAFI also automatically logs off a CLEC representative after ten minutes of non-use. Nynex currently offers only its GUI for maintenance. Like Bell South's TAFI, the Nynex GUI requires dual entry and automatically logs off a CLEC representative after a period of non-use. The GUI only provides access to maintenance and repair for resale, not for unbundled elements.

26. In many instances, ILECs are offering old versions of standard interfaces. No ILEC, for example, has yet implemented EDI version 7.0 for ordering even though that version was finalized by the Electronic Data Interchange (EDI) Service Order Sub-Committee (SOSC) at the end of February. Instead, of version 7.0, Ameritech, for example, offers version 5.0 which does not offer the ability to order unbundled elements. Ameritech therefore employs an ASR interface for ordering unbundled loops which requires manual intervention and creates a fragmented ordering process that substantially impedes CLECs ability to compete.

27. It is noteworthy that the issue of version control/implementation for new standards is an area that MCI believes may require further Commission oversight. The ATIS bodies are not addressing such version control/implementation issues for local services standards precisely because all ILECS have implemented proprietary interfaces to date and impeded any attempts to establish processes and dates by which the emerging or existing standards must be implemented.

28. Finally, as explained above, as far as MCI is aware, no ILECs have yet begun developing EDI via TCP/IP/SSL3 -- the industry standard solution for pre-ordering.

Operational Readiness

29. Even where ILECs are offering interfaces that appear technically acceptable on their face, for the most part, those interfaces are not operationally ready. MCI's experience with PacBell and Ameritech -- the two ILECs with which MCI has the most commercial experience -- demonstrates the need to carefully work through the inevitably difficult business rules which underly any system before declaring an operations support system interface to be operationally ready. In PacBell, for example, MCI had to stop advertising and scaled back its commercial launch because the inability of PacBell's OSS to handle even a small volume of orders was injuring MCI's reputation. In Ameritech, as this Commission is well aware, the Wisconsin Commission, the Michigan Commission, the Illinois Staff, and the Department of Justice, all recently concluded that Ameritech had not yet shown that its OSS was operationally ready -- even though Ameritech had begun carrier to carrier testing of that OSS in February of 1996.

30. As Sam King explained in his affidavit before this Commission, it is indeed correct that Ameritech's OSS is not operationally ready. Even for the processes with which Ameritech has had the most experience, those for the ordering of resold POTS (Plain Old Telephone Service), significant problems remain. As of the time of Sam's affidavit, these included the disappearance of more than 21% of MCI's EDI orders into the "black hole" of Ameritech's systems, dropped or erroneously added features on 27% of MCI's EDI test orders, manual intervention on 26.7% of the orders completed (based on Ameritech's data from the best month it reports); double billing of more than 12% of MCI's customers, and others. Sam explained that